

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORMAN GRAY #108144,

Plaintiff,

File No. 1:14-CV-947

v.

HON. ROBERT HOLMES BELL

CORIZON HEALTH SERVICES
and WILLIAM D. NELSON,

Defendants.

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MEMORANDUM OPINION AND ORDER

This is a prisoner civil rights complaint filed pursuant to 42 U.S.C. § 1983. Defendants moved for summary judgment on December 30, 2014. The matter was assigned to Magistrate Judge Phillip J. Green, who issued a report and recommendation (R&R), recommending that the Court grant Defendants' motion. (ECF No. 27.) The R&R was served on Plaintiff via United States mail at the Muskegon Correctional Facility where he had been incarcerated. On May 5, 2015, the mailing to Plaintiff was returned to the Court with a handwritten notation, "RTS [Return to Sender] Death." (ECF No. 28.)

On May 7, 2015, Defendants filed a Suggestion of Death under Federal Rule of Procedure 25(a)(2), stating that Plaintiff died on March 13, 2015. (ECF No. 29.) Attached to the suggestion of death is a print-out from the Michigan Department of Corrections' Inmate Tracking Information System (OTIS), reflecting that Plaintiff was discharged on March 13, 2015. (*Id.*)

Federal Rule of Procedure 25(a) sets forth the procedures to be followed when a party dies during the proceedings:

(a) Death.

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

In this case, Plaintiff proceeded *pro se* and was a prisoner when he filed this action. He does not have an attorney or counsel in this action to inform his successor or representative of this pending litigation. In order to follow the procedure set forth in Rule 25(a), Defendants shall make a good faith effort to identify and locate Plaintiff's successor, and serve him or her with the Suggestion of Death. Upon service, Plaintiff's successor shall have 90 days to file a motion for substitution pursuant to Rule 25(a)(1).

Accordingly,

IT IS HEREBY ORDERED that Defendants shall make a good faith effort to identify Plaintiff's successor and, if such individual is identified, to serve him or her with the

Suggestion of Death.

IT IS FURTHER ORDERED that Defendants shall file proof of service with the Court. Defendants shall notify the Court within sixty days if they are unable to identify Plaintiff's successor.

Dated: May 11, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE